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Report : Petition of J. Kennedy

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IN SENATE OF THE UNITED STATES.

JANUARY 17, 1839.

Submitted, and ordered to be printed

MR. LUMPKIN submitted the following

REPORT :

The Committee on Indian Affairs, to whom has been referred the memorial of Joshua Kennedy, asking indemnity for the destruction of property by the Creek Indians, in the year 1813, submit the following report :

The memorialist states that, in the year 1810, he purchased a tract of land on the Tensaw river, about one and a half mile south of latitude thirty one degrees north, the line of demarcation between the United States and Spanish territory ; that in the month of October of the same year, the President of the United States issued his proclamation directing Governor Claiborne to take possession, for the United States, of the country including said land, and promising protection to the inhabitants in their persons, property, and religion ; that, in consequence of the protection thus promised, the memorialist proceeded to make extensive and valuable improvements on said tract of land by building dwelling-houses, mills, a cotton gin, cotton press, &c. ; that he purchased and had on hand large quantities of cotton, rope, cordage, lumber, &c. ; that, while a war was raging with Great Britain, and apprehending an attack upon the settlements on Lower Tensaw, in the summer or fall of 1813, the officer of the United States intrusted with the defence of that part of the country ordered the buildings of the memorialist to be occupied by the troops of the United States as a fort or garrison, and that the buildings were occupied accordingly. Some time afterwards, and during the last named year, and after the massacre at Fort Mimms, in the panic which was occasioned by that disaster, the troops were withdrawn from his premises, and they left entirely exposed to the ravages of the enemy ; and that the hostile Creeks, under the lead of *Francis*, in a few days burned and destroyed all his houses, mills, cotton, &c., and at the same time killed his cattle and other stock ; and his loss occasioned thereby amounted to upwards of \$23,000 ; and that he verily believes said loss was occasioned by his possessions, having been occupied as a garrison or fort.

The memorialist further states that he believes his case is embraced by the principles recognised in the act of 1816, and that he made a regular application to commissioners, and furnished the necessary testimony, but owing to the circumstance of the time for which the commissioner was

appointed expiring, no allowance has been made to him for his losses, and therefore he prays indemnity to be provided by Congress, &c.

The depositions of sundry witnesses accompany this memorial, which establish many of the facts therein set forth. But the committee consider the proofs presented insufficient to bring the claim within the provisions of the act of 1816; because these provisions did not extend to any buildings other than such as were occupied for the military purposes therein designated, *at the time of the destruction*. The military occupation in this case, whatever it may have comprehended, is shown to have been abandoned early in September, 1813, before any enemy was in sight; and the destruction, according to the deposition of George Stiggins, did not take place until the November following. It appears from the claimant's memorial to Congress that the order of the military commandant did not authorize the occupation of more than the saw-mills, nor are there any other buildings mentioned therein, or in the proofs, alleged to have been occupied by the troops. Hence, if the military occupation had continued to the time of the destruction, an indemnity for the mills only could be justly claimed under the law of 1816. In this memorial it may be observed that the claimant alleges that his loss exceeded \$23,000; and yet in his memorial sworn to before Judge Toulman, the property destroyed within the pickets is not declared to have been worth more than \$9,000, and the other, which is alleged to have been destroyed adjacent thereto, is estimated at the value of \$2,000 or \$3,000 more. Moreover, upwards of twenty years have now elapsed since this claim was first pressed upon the Government for payment; and while all the circumstances and transactions connected with this claim were fresh in the recollection of the people of that day, the claimant was unable to produce satisfactory proof of the justice of his claim upon the Government for the property alleged to have been lost, although he made frequent attempts to do so. His claims and proofs were examined by competent and disinterested officers of the Government, as well as by vigilant committees of Congress, whose reports were unfavorable to this claim. The committee, therefore, are of opinion that the prayer of the memorialist ought not to be granted.